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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/023,608	12/17/2001	Robert Cazier	10014022-1	2902

22879 7590 03/13/2007
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INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

EXAMINER

TRAN, TAM D

ART UNIT	PAPER NUMBER
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2628

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/13/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/023,608

Applicant(s)

CAZIER ET AL.

Examiner

Tam D. Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ⁰¹~~00~~ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-26 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-21, drawn to active graphic control, classified in class 345, subclass 619.
 - II. Claims 22, 23, drawn to portable digital device, classified in class 348, subclass 169.
 - III. Claims 24, 25, 26, drawn to digital camera, classified in class 348, subclass 207.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions I, II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention I has separate utility such as showing active graphic control; invention II has separate utility such as showing portable digital device; invention III has separate utility such as showing digital camera. See MPEP § 806.05(d).
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Steven L Webb on 10/06/2003 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-21. Affirmation of this election must be made by applicant in replying to this Office action. Claims 22-26 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Weiss et al. (USPN 5900877), hereinafter Weiss.

6. In regard to claim 1, Weiss teaches an active graphical control (see col.2 lines 45-51) comprising: at least one graphical element with at least a first pixel the pixel having a first color; see Fig.2 col.6 lines 1-25; a means for detecting at least one color in a background (the opacity of graphic control layer) where the at least one color is near the first pixel; see col.9 lines 56-61; the at least one pixel configured to change to at least a second color when the contrast between the first color and the at least one color in the background is below a predetermined level (opacity level). See col.10 lines 54-65.

7. In regard to claim 2, Weiss teaches an active graphical control, where there is at least a second color in the background near the graphical element, and the at least one graphical element changes to a third color at the place where the second color is near the graphical element. See Fig.2 col.9 lines 15-25.

8. In regard to claim 3, Weiss teaches an active graphical control, where the second color is user selectable (colors of the each pixel can be selected by the pointing device). Fig.2 col.9 lines 15-25.

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9. In regard to claim 4, Weiss teaches an active graphical control, where the second color is selected to maximize the contrast against the background color. Fig.2 col.9 lines 15-25.

10. In regard to claims 5, 14, 19, Weiss teaches an active graphical control, where there is at least a second color in the background near the first pixel, and the second color of the pixel is chosen to maintain a predetermined level of contrast between both the first color in the background and the at least second color in the background. See Fig.2.

11. In regard to claim 6, Weiss teaches an active graphical control, where the graphical element is text. See Fig.2.

12. In regard to claims 7, 9, 18, 20, 21, Weiss teaches an active graphical control comprising: a first graphical element with at least a first color and having an outer perimeter; Fig.2, col.14 lines 48-55.

a means for detecting a at least one background color (the opacity of graphic control layer) where the at least one background color is adjacent to the outer perimeter; see Fig.2 col.9 lines 56-61; the first graphical element configured to change the at least one background color (active graphic) to a second background color (inactive graphic) when the contrast between the at least one background color and the first color is below a predetermined level. See col.10 lines 54-65.

13. In regard to claim 8, Weiss teaches an active graphical control, where there is at least a third background color adjacent to the outer perimeter of the graphical element, and the at least one graphical element changes the third background color to a fourth background color at the place where the third background color is adjacent to the outer perimeter of the graphical element (one or more graphic control layers corresponding to third background and fourth background). See col.6 lines 40-47.

14. In regard to claim 10, Weiss teaches an active graphical control, where there is at least a second background color underneath the transparent component, and the second background color changes to a third background color (one or more graphic control layers corresponding to second background and third background). See col.6 lines 40-47.

15. In regard to claims 11, 15, 16, Weiss teaches a method for displaying an active graphical control comprising: (a) detecting at least one background color (opacity of graphic control layer) near the active graphical control; see col.9 lines 50-65; (b) determining a contrast (opaque) between the at least one background color and at least one color in the graphical control; see col.11 lines 30-40; (c) changing the at least one color in the graphical control to at least a second color when the contrast between the first color and the at least one background color is below a predetermined level (opacity level). See col.10 lines 54-65.

16. In regard to claims 12, 17, Weiss teaches a method for displaying an active graphical control, where steps (a) through (c) are repeated each time the background color changes. See Fig.10.

17. In regard to claim 13, Weiss teaches a method for displaying an active graphical control, where steps (a) through (c) are repeated each time the graphical control is moved. See Fig.10.

Conclusion

18. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Tam D. Tran** whose telephone number is **703-305-4196**. The examiner can normally be reached on MON-FRI from 8:30 – 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

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supervisor, **Matthew Bella** can be reached on **703-308-6829**.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or faxed to:

(703) 872-9314 (for Technology Center 2600 only)

Hand-delivered response should be brought to Crystal Park II, 2121 Crystal Drive,
Arlington, VA, Sixth floor (Receptionist).

Any inquiry of a general nature or relating to the status of this application or proceeding
should be directed to the Technology Center 2600 Customer Service Office whose
telephone number is (703) 306-0377.

Tam Tran

TT
Examiner

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MATTHEW C. BELLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600